IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7924 OF 2007

Shri Ninadh Naginlal Shah
and Ors. ....Petitioners

Versus

Chaganlal Premchandra Shah
and Ors. ....Respondents

Surel S.Shah for the petitioners.

CORAM: S.C.DHARMADHIKARI, J.

19.11.2007

P.C. :

1. Heard Mr.Shah appearing for the petitioner. Perused the order passed by the Trial Court.

2. Mr.Shah does not challenge that part of the order where the Trial Court allows Application Exhibit 85 and permits the cross-examination to be put in Question and Answer form to a witness who is unable to

hear and is deaf. However, his submission is that the entire set of questions cannot be furnished at this stage, in as much as, when the witness is being cross-examined in court in this form. The witness desires that he shall be furnished with all questions before hand to enable him to prepare himself to answer the same. The petitioner states that this is not possible as he may pose further questions or modify the same which are contained in the Questionnaire. That part of the order (operative part no.2 and 3) is being questioned before me by Shri Shah.

3. Having perused the entire order including the operative part, to my mind, the Petitioner need not have any apprehension because when a question is put to the witness on the date and time fixed for his cross-examination and he answers the same in writing, the Learned Judge is bound to give opportunity to the Petitioner to either pose further questions or modify the questions which are contained in the Questionnaire. However, the apprehension in the mind of the Petitioner can be removed by directing the Trial Court not to insist upon the Questionnaire to be furnished in advance

by the Petitioner, at this stage. After the cross-examination commences, depending upon the written questions put to the witness and the answer given thereto, the Petitioner may either pose further questions or take such decision as is appropriate and is in his interest. That opportunity shall be furnished by the Trial Court to the Petitioner and the Trial Court should not insist on all questions to be put in writing before hand. With this clarification and modification the petition is disposed of. However, it would be open for the Trial Court to insist upon the list of questions being furnished in advance so to enable the witness to answer the same and save judicial time, in case, the cross-examination takes more than the allotted time.

sd/-

(S.C.DHARMADHIKARI, J)